

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE EDUARDO CURIEL, individually and on behalf :
of others similarly situated, :
: Plaintiff, : REPORT &
-against- : RECOMMENDATION
: 10-CV-2784 (ERK)
ELITE SKY INTERNATIONAL INC., et al., :
: Defendants.
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GOLD, STEVEN M., U.S.M.J.:
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By Order dated September 20, 2011, I directed plaintiff to submit additional briefing to support his motion for default judgment, which was referred to me for a report and recommendation by the Honorable Edward R. Korman, Docket Entry 26, no later than October 24, 2011. Docket Entry 27. My Order raised questions and identified particular matters for plaintiff to address.

When no submission was filed by plaintiff, I issued a second Order directing plaintiff to comply with the original Order no later than December 1, 2011. Docket Entry 28. I warned plaintiff that a failure to comply could result in a recommendation that the complaint be dismissed for failure to prosecute. *Id.* As of today's date, plaintiff has again failed to comply with my Orders and has not filed any additional submissions or filed affidavits of service of the Orders upon the defaulting defendants.¹ In light of plaintiff's failure to comply with my two Orders, I respectfully recommend that plaintiffs' motion for a default judgment be denied and that this action be dismissed with prejudice for failure to prosecute.

¹ I note that my Orders were received by five email addresses associated with plaintiff's counsel's office: faillace@employmentcompliance.com, DKnauth@faillacelaw.com, Pedro@Faillacelaw.com, TSwett@faillacelaw.com, yolandarivero@faillacelaw.com.

Any objections to the recommendations contained in this report must be filed with the Clerk of the Court within fourteen days of this Report and in any event no later than December 22, 2011. Failure to object to this report may waive the right to appeal the district court's order. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72; *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

Plaintiff shall serve a copy of this Order, certified mail, return receipt requested, on defendants at their last known addresses, and provide the court with a copy of the return receipt.

STEVEN M. GOLD
United States Magistrate Judge

Dated: Brooklyn, New York
December 5, 2011

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